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No. 91-185

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1991

MICHAEL S. ANTOON, PETITIONER

v.

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT*

**MEMORANDUM FOR THE UNITED STATES
IN OPPOSITION**

KENNETH W. STARR
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4

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MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner contends that the court of appeals erred in reversing an order suppressing as evidence conversations recorded by a witness wearing a concealed body recorder.

1. On February 16, 1990, petitioner was indicted by a grand jury sitting in the United States District Court for the Western District of Pennsylvania. He was charged with conspiring to distribute and possess Schedule II controlled substances, in violation of 21 U.S.C. 846; with conspiring to acquire and possess Schedule II controlled substances by fraud and deception, in violation of 21 U.S.C. 841(a)(2); and

with multiple counts of acquiring controlled substances by fraud, in violation of 21 U.S.C. 843(a)(3).

Prior to trial, petitioner moved to suppress his recorded conversations, alleging that the government had forced the witness who had recorded conversations with petitioner to wear a body recorder. On October 22, 1990, the district court found that the consent of the witness to the wearing of the body recorder was involuntary and suppressed the recorded conversations as evidence. Pet. App. 1-16.

The court of appeals reversed. Pet. App. 17-29. The court ruled that the district court's conclusion that the witness did not voluntarily consent to wearing the body recorder was clearly erroneous. The court found no evidence that law enforcement officials did anything to overcome the free will of the witness, finding that the district court relied upon evidence that merely explained his motive for cooperating.

2 Petitioner contends (Pet. 23-40) that the court of appeals erred in ruling that the witness voluntarily consented to record the conversations. Whatever the merits of petitioner's contentions, they are not presently ripe for review by this Court. The court of appeals' decision places petitioner in precisely the same position he would have occupied if the district court had denied his motion to suppress. If petitioner is acquitted following a trial on the merits, his contentions will be moot. If, on the other hand, petitioner is convicted and his conviction is affirmed on appeal, he will then be able to present his contentions to this Court, together with any other claims he may have, in a petition for a writ of certiorari seeking review of a final judgment against him. Accordingly, review by this Court of the court

of appeals' decision would be premature at this time.'

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

KENNETH W. STARR
Solicitor General

AUGUST 1991

* Because this case is interlocutory, we are not responding on the merits to the question presented by the petition. We will file a response on the merits if the Court requests.